

Discussion Paper

Review of Landlord and Tenant Act

Submitted by:

The Honourable Michael Ballantyne
Minister of Justice

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DISCUSSION PAPER

REVIEW OF LANDLORD AND TENANT ACT

A review of the Residential Tenancies part of the Landlord and Tenant Act was undertaken, by a contractor hired for the purpose, during the spring of 1985. Written briefs were submitted and oral presentations were made by individual landlords and tenants at public meetings. In addition, the contractor conducted a thorough and comprehensive review of existing legislation in other jurisdictions.

The contractor's report, which was tabled at the Legislative Assembly's fall session, contains some forty or more recommendations. A comprehensive listing of these, with the Department of Justice's comments, is attached as Appendix A.

There are two major issues which arise from the Report, and it is on these that I am seeking feed-back from the Members of this Assembly in order that appropriate legislation can be developed which will receive the full support of this House.

The issues to be decided upon are:

- 1) do we want a system of rent controls in the Northwest Territories? and
- 2) would a Rentalsman's Office be of benefit to tenants and landlords in the Northwest Territories?

The Commission on the Rent Control Act of 1946, which was established by the Congress to study the problems of rent control, has submitted a report to the Congress. The report contains a number of recommendations which are being considered by the Congress. The Commission has found that the existing rent control laws are not working well and that there is a need for new legislation. The Commission has recommended that the Congress should pass a new rent control law which would provide for a more effective system of rent control. The Commission has also recommended that the Congress should provide for a more effective system of enforcement of the rent control laws. The Commission has found that the existing laws are not being enforced properly and that there is a need for a more effective system of enforcement. The Commission has recommended that the Congress should provide for a more effective system of enforcement of the rent control laws. The Commission has also recommended that the Congress should provide for a more effective system of enforcement of the rent control laws.

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1. Rent Controls

The majority of Provinces in Canada have some form of rent controls in place. They also have a far greater inventory of available rental accommodation than does the Northwest Territories. In recent years, the Northwest Territories has experienced extremely low vacancy rates, with demand far exceeding supply. In order to rectify this situation, the Northwest Territories must encourage investment of private capital into rental units in sufficient quantity to meet the Territories' annual needs.

As the attractiveness of rental investment is directly related to potential returns, the existence of rent controls cannot help but reduce the supply of new rental housing. Rent controls are a major impediment to new rental construction as they keep market rents below the level necessary to make new rental production viable.

For the Northwest Territories, actual rent controls would not appear to be an appropriate solution to the current situation. However, in order to protect tenants from the possible "gouging" by landlords, particularly while the available rental market remains low, it may be expedient to restrict the number of rental increases allowed to one in a twelve-month period, as recommended in the Report.

2. Rentalsman

It has been recommended that new landlord/tenant legislation should authorize the appointment of one or more administrative officials known as Rentalsmen, who would have exclusive jurisdiction over specified advisory, investigatory, mediatory, arbitrating and educative functions. This would relieve the present situation which vests the power to resolve any and all disputes between landlords and tenants solely with the courts.

Rentalsman continued

Jurisdiction in landlord and tenant matters would basically remain with the Courts, except for those functions specifically allocated to a Rentalsman. For example, a Rentalsman would have the power to direct repairs to a damaged premise. But, any action for damages arising from a failure to repair would be within the Court's jurisdiction. The Rentalsman's authority and responsibility would be clearly defined in the legislation.

The clear advantage to having a Rentalsman's Office is the speedy resolution of those aspects of landlord and tenant relations which are subject to frequent and recurring dispute. A Rentalsman type of system is in effect in a number of Provinces as well as the Yukon Territory, and it would appear to be an appropriate mechanism for the handling of landlord and tenant matters in the Northwest Territories.

CONTRACTOR'S RECOMMENDATIONSREPORT
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| 1. Repeal Part IV of existing Act and replace with a new <u>Residential Tenancies Act</u> . (Parts I, II, and III of existing legislation be preserved (to be re-written at some future date, if necessary) and to be known as <u>Commercial Tenancies Act</u> .) | 25 | AGREE |
| 2. Include a provision which indicates the scope of the Act is to apply to tenancies of residential premises, and that its provisions should extend to any occupancy which intends to create a tenancy agreement. | 28 | AGREE |
| 3. Include mobile homes and pads in the definition of "residential premises" until specific legislation pertaining to same is enacted. | 27 | AGREE |
| 4. Include a definition of "housing cooperatives", but exempt same from application of the Act. | 27 | AGREE |
| 5. Include caretaker's suite in the definition of "residential premises" but exclude same from provisions relating to tenant security of tenure. | 27 | AGREE |
| 6. Repeal Section 77, which refers to room and board situations. | 27 | AGREE |
| 7. Include a definition of transient living accommodations, vacation homes, and "living care units" but exempt same from the Act. | 28 | AGREE |
| 8. Include a provision which ensures the Crown is bound by the Act, except for certain provisions from which it is exempt. This recommendation should be TABLED pending release of the Report of the Special Committee on Housing. | 28 | AGREE |
| 9. Define the relationship between a landlord and tenant as being on a purely contractual basis including remedies for breach of contract; provisions regarding frustration of contract and mitigation of damages; and abolishing the remedy of distress. | 32-36 | AGREE |

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| 10. To include, by regulation, a standard form for all written tenancy agreements; and to require the landlord to deliver a copy of same to the tenant within a specified time period or the tenant's obligations under the agreement will be suspended; and to provide for "reasonable" additions to the agreement. Whether such additions are reasonable may be determined by a Rentalsman. | 37-39 | AGREE |
| 11. Repeal provisions related to acceleration of rent where a tenant defaults and prohibit such a practice; include a provision for a penalty of not more than 1% of the monthly rent for late payment. | 40 | AGREE |
| 12. Retain provisions relating to door locks security systems; make it an offence where the landlord does not comply. | 41 | AGREE |
| 13. Include a provision to allow entry of political canvassers to a residential premise. | 41 | AGREE |
| 14. Amend Section regarding landlord's right of entry by extending hours to 8:00 p.m. | 43 | AGREE |
| 15. Amend Sections regarding security deposits by: | 44-50 | |
| a) increasing amount from $\frac{1}{2}$ to 1 month's rent; | | a) AGREE |
| b) permit security deposit to be paid over a 3-month period; | | b) AGREE |
| c) re-define "rent" to include a definition of "economic" rent; | | c) AGREE |
| d) allow landlords of subsidized units of residential premises to require a security deposit based on the "economic" rent; | | d) AGREE |
| e) Require both parties to sign a pre-tenancy agreement which sets out the conditions and contents of the premise and require landlord to provide a copy to the tenant; | | e) AGREE |
| f) amend section regarding rate of interest to be paid on security deposits by putting it into a regulation whereby the rate may be determined by the Commissioner; | | f) AGREE |

15. Amend Sections regarding security deposits by: (cont.)
- g) require landlords to maintain security deposits in a trust account in the N.W.T., separate from other monies of the landlord; and to require a new landlord to assume the rights and obligations of the previous landlord; g) AGREE
 - h) provide for a Rentalsman to intervene and have binding powers of arbitration concerning disputes over security deposits; h) AGREE
16. a) Include a definition of the landlord's obligation to repair and maintain the premises which provides a greater degree of comprehension for all the parties; 51-53 a) AGREE
- b) a provision to ensure the landlord does not discontinue providing any service or facilities; b) AGREE
- c) where a landlord violates this duty, include a provision whereby the tenant may pay his rent to the Rentalsman who may carry out the repairs, etc. c) AGREE
17. Amend the section regarding the tenant's obligation to maintain an orderly standard of cleanliness by extending it to include the residential property. Ordinary wear and tear would not constitute damage to the premises. 53-54 AGREE
18. Include a provision which outlines the procedure to be followed by a landlord when tenant abandons his personal goods at the landlord's premises. 55-56 AGREE
19. a) Include a provision requiring the landlord to post a notice bearing the name and address for service of legal process. 57 a) AGREE
- b) post a copy of the Act. b) DISAGREE
Posting such a document is an invitation to destroy same. Rather, the landlord should be

19. b) Cont.....

required to maintain a copy of the Act to be made available at any reasonable time, to tenants.

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| 20. | Include provisions which outline both the tenant's and landlord's duties and responsibilities (such as causing a nuisance or disturbance, etc.) | 57-58 | AGREE |
| 21. | Include a provision requiring a landlord to maintain an inventory of tenants who may require special assistance in an emergency situation. | 58 | AGREE
Such an inventory to be maintained in a secure manner, but not to be publicly posted. |
| 22. | Increase the fines for offences under the Act from \$500.00 to \$2000.00. | 59-60 | AGREE |
| 23. | Include provisions for a system of security of tenure. | 61-63 | AGREE |
| 24. | a) Retain present provisions governing termination of tenancy procedures; and

b) Require a prescribed form for terminating a tenancy agreement. | 64-66 | AGREE
Except require all notices to be in writing.

b) DISAGREE
A prescribed form would be too onerous for use by many landlords in remote communities. |
| 25. | a) Retain provisions related to term of tenancy and amount of notice required for termination; and

b) delete subsection governing situations where there is an inability to pay (the same amount of notice is required, anyhow). | 66 | a) AGREE

b) AGREE |
| 26. | Include a list of reasons whereby a landlord may terminate a tenancy agreement and provisions respecting the procedure to be followed, including the function of a Rentalsman in such situations. | 68-70 | AGREE |

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| a) Include provisions authorizing the appointment of a Rentalsman/Rentalsmen who would have exclusive jurisdiction over specified matters and functions and whose powers would be clearly outlined in the Act; | 73-83 | a) AGREE |
| b) matters of law should remain in the Court's jurisdiction. | 73-83 | a) AGREE |
| Include provisions whereby persons already employed in the government service may be designated as a "Rentalsman" for a specified geographic area. | 84-85 | AGREE
This would require the appointment of Regional staff to undertake this function in addition to their other duties. |
| a) Include provisions which permit landlords to increase rent only once in any twelve month period; and; | 86-87 | a) AGREE |
| b) which require the Standard Tenancy Agreement form to clearly indicate what services are to be included within the amount of rent charged; | | b) AGREE |
| c) which provide powers for the Rentalsman to investigate accusations of discriminatory rental increases. | | c) AGREE |
| No form of rent control, other than that outlined in #29 above, should be introduced in the N.W.T. | 88-89 | AGREE |

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